

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)
) CR-18-00258-EJD
 PLAINTIFF,)
) SAN JOSE, CALIFORNIA
 VS.)
) DECEMBER 8, 2020
 RAMESH SUNNY BALWANI,)
) PAGES 1 - 15
 DEFENDANT.)
 _____)
)

TRANSCRIPT OF ZOOM PROCEEDINGS
BEFORE THE HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE
BY: JOHN C. BOSTIC
JEFFREY B. SCHENK
150 ALMADEN BOULEVARD, SUITE 900
SAN JOSE, CALIFORNIA 95113

BY: ROBERT S. LEACH
VANESSA BAEHR-JONES
1301 CLAY STREET, SUITE 340S
OAKLAND, CALIFORNIA 94612

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER:

IRENE L. RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

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A P P E A R A N C E S: (CONT'D)

FOR DEFENDANT BALWANI: ORRICK, HERRINGTON & SUTCLIFFE LLP
BY: JEFFREY COOPERSMITH
AMANDA MCDOWELL
701 FIFTH AVENUE, SUITE 5600
SEATTLE, WASHINGTON 98104

BY: STEPHEN CAZARES
77 SOUTH FIGUEROA STREET, SUITE 3200
LOS ANGELES, CALIFORNIA 90017

1 SAN JOSE, CALIFORNIA

DECEMBER 8, 2020

2 P R O C E E D I N G S

10:13AM 3 (COURT CONVENED AT 10:13 A.M.)

10:13AM 4 THE COURT: THANK YOU. GOOD MORNING.

10:13AM 5 LET'S CALL 18-258, UNITED STATES VERSUS RAMESH BALWANI.

10:13AM 6 I KNOW MS. KRATZMANN HAS SIGNED YOU IN, BUT WHY DON'T I

10:13AM 7 JUST CAPTURE FOR THE RECORD THE APPEARANCES OF THE PARTIES,

10:13AM 8 PLEASE.

10:13AM 9 WHO APPEARS FOR THE GOVERNMENT?

10:13AM 10 MR. LEACH: GOOD MORNING, YOUR HONOR.

10:13AM 11 THIS IS ROBERT LEACH ON BEHALF UNITED STATES. I APOLOGIZE

10:14AM 12 I'M NOT ON THE VIDEO. I'M HAVING SOME TECHNICAL ISSUES IN THE

10:14AM 13 OFFICE.

10:14AM 14 AND I UNDERSTAND MY COLLEAGUES, JEFF SCHENK,

10:14AM 15 VANESSA BAEHR-JONES, AND JOHN BOSTIC, ARE ON AS WELL.

10:14AM 16 THE COURT: YES. THANK YOU. GOOD MORNING. I SEE

10:14AM 17 THEM HERE. GOOD MORNING EVERYONE.

10:14AM 18 AND WHO APPEARS FOR THE DEFENSE?

10:14AM 19 MR. COOPERSMITH: GOOD MORNING, YOUR HONOR.

10:14AM 20 THIS IS JEFF COOPERSMITH ON BEHALF OF MR. BALWANI.

10:14AM 21 WITH ME ARE MY COLLEAGUES, STEVE CAZARES AND

10:14AM 22 AMADA MCDOWELL, ALSO ON BEHALF OF MR. BALWANI.

10:14AM 23 MR. BALWANI IS ALSO PRESENT.

10:14AM 24 AND AS THE COURT HAS INQUIRED BEFORE, WE DO HAVE THE

10:14AM 25 ABILITY TO CALL HIM ON HIS CELL PHONE IF THERE'S SOME NEED TO

10:14AM 1 TALK TO HIM OFFLINE FROM THE ZOOM CALL.

10:14AM 2 THE COURT: ALL RIGHT. THANK YOU.

10:14AM 3 AND HE DOES CONSENT TO THIS STATUS CONFERENCE PROCEEDING
10:14AM 4 VIA REMOTE TECHNOLOGY OWING TO THE PANDEMIC?

10:14AM 5 MR. COOPERSMITH: YES, YOUR HONOR.

10:14AM 6 THE COURT: ALL RIGHT. THANK YOU. GOOD MORNING
10:14AM 7 EVERYONE.

10:14AM 8 I DID RECEIVE YESTERDAY EVENING DOCUMENT 621, WHICH WAS A
10:15AM 9 PROPOSED SCHEDULE. THANK YOU FOR MEETING AND CONFERRING AND
10:15AM 10 PUTTING THAT TOGETHER.

10:15AM 11 BEFORE WE DISCUSS THIS, LET ME JUST OPEN THE FLOOR. IS
10:15AM 12 THERE ANYTHING THAT EITHER PARTY WANTS TO BRING TO MY ATTENTION
10:15AM 13 INITIALLY ABOUT ANYTHING IN THE CASE?

10:15AM 14 LET ME HAVE YOU SLOW DOWN.

10:15AM 15 MR. LEACH: NOT FROM THE GOVERNMENT, YOUR HONOR.

10:15AM 16 THE COURT: ALL RIGHT. THANK YOU. MR. COOPERSMITH.

10:15AM 17 MR. COOPERSMITH: NOT FROM THE DEFENSE, YOUR HONOR.

10:15AM 18 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

10:15AM 19 LET ME ALSO THANK YOU FOR MEETING AND CONFERRING AND
10:15AM 20 PUTTING TOGETHER THIS PROPOSED SCHEDULE.

10:15AM 21 I SEE THAT IT DESCENDS FROM -- WITH SOME DEADLINES FROM
10:15AM 22 MAY OF NEXT YEAR, 2021, THROUGH A PROPOSED TRIAL DATE OF
10:15AM 23 AUGUST, THE LAST WEEK IN AUGUST OF 2021 WITH -- IN BETWEEN WITH
10:15AM 24 RESPECTIVE FILING DATES AND SUBMISSION DATES FOR OTHER ITEMS.
10:16AM 25 THANK YOU FOR PUTTING THAT TOGETHER. IT GIVES ME SOME GUIDANCE

10:16AM 1 AS TO WHAT I NEED TO DO ABOUT LOOKING AT OUR SCHEDULE FOR NEXT,
10:16AM 2 NEXT YEAR.

10:16AM 3 I SHOULD TELL YOU OVERARCHING IT'S -- I KNOW BOTH PARTIES
10:16AM 4 IN THIS CASE WOULD WISH TO GET TO TRIAL AS SOON AS POSSIBLE. I
10:16AM 5 KNOW THAT.

10:16AM 6 AND OWING TO THE PANDEMIC, OF COURSE, ALL OF OUR LIVES
10:16AM 7 HAVE CHANGED DRAMATICALLY AND CONTINUE TO CHANGE. WE'VE BEEN
10:16AM 8 DOING REMOTE COURT FOR SOME TIME. AS YOU PROBABLY KNOW, IN THE
10:16AM 9 NORTHERN DISTRICT OF CALIFORNIA OUR COURTS ARE -- WE'LL REALLY
10:16AM 10 RESTRICTING IN-PERSON ATTENDANCE IN OUR COURT BUILDINGS AND
10:16AM 11 HAVE CONDUCTED OUR CALENDARS AS SUCH WITH RESTRICTED AND
10:16AM 12 LIMITED IN-PERSON PROCEEDINGS.

10:16AM 13 AS YOU KNOW, THERE ARE NO MORE TRIALS FOR THE BALANCE OF
10:16AM 14 THE YEAR, AND ALBEIT IT IS JUST A FEW WEEKS, BUT WE PUT THAT IN
10:17AM 15 PLACE A FEW WEEKS AGO.

10:17AM 16 OUR COUNTIES, THE COUNTIES THAT ARE SERVED BY THE NORTHERN
10:17AM 17 DISTRICT, MOST OF THEM SAVE FOR ONE, I BELIEVE, HAVE ENGAGED IN
10:17AM 18 MORE STRINGENT AND AGGRESSIVE LOCKDOWN, I'LL CALL THEM,
10:17AM 19 PROTOCOLS FOR THE SAFETY OF THE PUBLIC. WE'RE ALL COGNIZANT OF
10:17AM 20 THOSE THINGS. SO WE'RE OPERATING IN THAT UNIVERSE RIGHT NOW.

10:17AM 21 IT'S ANTICIPATED, AS YOU KNOW, YOUR -- THE CODEFENDANT IN
10:17AM 22 THIS CASE TRIAL IS SCHEDULED TO START IN MARCH, AND I'VE HAD
10:17AM 23 DISCUSSION WITH THE LAWYERS ABOUT THAT. I HAVE NOT DISTURBED
10:17AM 24 THE MARCH TRIAL DATE, AND WE'RE ADVANCING AND DOING
10:17AM 25 PREPARATIONS IN ANTICIPATION OF THAT DATE REMAINING.

1 I'VE BEEN TOLD THAT THE TRIAL ESTIMATE IN THE PARTNER CASE
2 IS ABOUT THREE MONTHS IS WHAT I'VE BEEN INFORMED. SO THAT
3 BETTER INFORMS YOU, I THINK, FOR A SCHEDULE. MY PRESUMPTION IS
4 THAT YOU USE THAT AS A METRIC TO PUT TOGETHER THE PROPOSED CASE
5 SCHEDULE FOR MR. BALWANI.

6 AS I SAID, THE SCHEDULE, YOUR SCHEDULE SUGGESTS A TRIAL
7 DATE IN AUGUST OF NEXT YEAR WHICH WOULD DOVETAIL AND FIT
8 APPROPRIATELY, I THINK, WITH THE CASE, MS. HOLMES'S CASE SHOULD
9 IT GO IN MARCH AS ANTICIPATED.

10 WE KNOW THAT ALL OF US, THE WORLD ACTUALLY, IS EAGER AND
11 WAS GRATEFUL TO HEAR ABOUT THE VACCINES THAT HAVE BEEN
12 DEVELOPED AT AMAZING SPEED. AND THE FDA, I THINK, IS NOW
13 APPROVING FOR THE UNITED STATES PURPOSES THE VACCINE.

14 BUT WE ALSO KNOW THE REALITIES OF DISTRIBUTING MILLIONS
15 AND MILLIONS OF VACCINES TO A POPULATION WILL BE CHALLENGING.
16 SO WE'LL KEEP TO MONITORING THAT. OF COURSE THAT AFFECTS ALL
17 OF US FOR JURY PURPOSES AND COURT PURPOSES.

18 WHAT I READ, AND YOU READ THE SAME THING, I'M SURE,
19 SUGGESTS THAT THE VACCINE SHOULD BE DISTRIBUTED, I THINK I READ
20 SOMETHING -- A COUPLE OF THINGS THAT SUGGEST BY SUMMER THINGS
21 SHOULD LOOK GOOD AT LEAST AS FAR AS LARGE NUMBERS OF THE
22 POPULATION HAVING THAT VACCINE AVAILABLE TO THEM, AND WE'LL
23 CONTINUE TO MONITOR THAT.

24 OF COURSE WE JUXTAPOSE THAT WITH THE SCHEDULE THAT WE'VE
25 PROPOSED, AND THAT IS SOMETHING THAT WE'LL ALL BE COGNIZANT OF

10:19AM 1 AS WELL.

10:19AM 2 I SHOULD TELL YOU THAT I ALSO HAVE -- I KNOW YOU'LL FIND
10:19AM 3 THIS HARD TO BELIEVE -- BUT I DO HAVE OTHER MATTERS ON THE
10:19AM 4 CALENDAR BEFORE ME. THERE'S -- AND IN THE SPIRIT OF FULL
10:19AM 5 DISCLOSURE, IT'S PUBLIC INFORMATION, OF COURSE, IF YOU LOOK AT
10:19AM 6 OUR DOCKET WE HAVE A CASE INVOLVING TWO DEFENDANTS WHO ARE
10:19AM 7 ALLEGED TO BE INVOLVED IN SOME GANG, AND IT'S A HOMICIDE CASE
10:19AM 8 THAT IS QUITE OLD. IT'S, I THINK, FOUR YEARS OLD MAYBE, THREE
10:20AM 9 OR FOUR YEARS OLD, AND THEY HAVE REQUESTED A TRIAL. I WILL
10:20AM 10 LOOK AT THEIR SCHEDULE.

10:20AM 11 MY RECOLLECTION IS THAT THEY SUBMITTED SOMETHING RECENTLY
10:20AM 12 AND WERE ASKING FOR A TRIAL IN THE FALL OF NEXT YEAR, AND OF
10:20AM 13 COURSE THAT LOOKS LIKE IT WOULD COMPETE WITH THE TRIAL HERE.

10:20AM 14 SO ALL OF THIS IS TO SAY I'M GRATEFUL FOR YOUR SCHEDULE.
10:20AM 15 I AM NOT GOING TO ADOPT IT TODAY. I'M GOING TO TAKE IT BACK,
10:20AM 16 LOOK AT OUR SCHEDULE, LOOK AT, AGAIN, WHAT I THINK WE CAN DO,
10:20AM 17 AND I WILL EITHER SUBMIT SOMETHING BACK TO YOU OR I ANTICIPATE
10:20AM 18 WE'LL SET ANOTHER STATUS CONFERENCE SOME TIME SOON AND PERHAPS
10:20AM 19 WE CAN DISCUSS ANOTHER SCHEDULE THEN.

10:20AM 20 LET ME JUST ASK THE PARTIES -- I DO HAVE A QUESTION FOR
10:20AM 21 YOU, MR. COOPERSMITH, AND MR. LEACH. IF YOU COULD TELL ME WHAT
10:21AM 22 DO YOU ANTICIPATE THE LENGTH OF THE TRIAL FOR MR. BALWANI?
10:21AM 23 WHAT IS THE LENGTH, EXPECTED, ANTICIPATED LENGTH?

10:21AM 24 MR. LEACH, MAYBE YOU CAN TELL ME WHAT YOU ANTICIPATE THE
10:21AM 25 GOVERNMENT -- HOW MUCH TIME THE GOVERNMENT NEEDS FOR THE

10:21AM 1 GOVERNMENT'S CASE?

10:21AM 2 WHOOPS. WE CAN'T HEAR YOU, MR. LEACH. NOPE. THERE'S A

10:21AM 3 BUTTON THAT NEEDS TO BE PRESSED SOMEWHERE.

10:21AM 4 MR. LEACH: CAN YOU HEAR ME NOW, YOUR HONOR?

10:21AM 5 THE COURT: YES. THERE WE GO.

10:21AM 6 MR. LEACH: SORRY ABOUT THAT INCONVENIENCE,

10:21AM 7 YOUR HONOR.

10:21AM 8 I ANTICIPATE THE TRIAL LENGTH WILL BE SIMILAR TO THE

10:21AM 9 HOLMES TRIAL, POSSIBLY A LITTLE BIT SHORTER GIVEN OUR

10:21AM 10 EXPERIENCE WITH ANOTHER TRIAL IN THE MATTER. AND PERHAPS THE

10:21AM 11 RESTRICTIONS WE'RE GOING TO BE OPERATING UNDER IN TERMS OF

10:22AM 12 COVID MIGHT BE SLIGHTLY DIFFERENT. SO WE PROJECTED EIGHT WEEKS

10:22AM 13 FOR THE HOLMES TRIAL. I THINK IT WILL BE SLIGHTLY LESS THAN

10:22AM 14 THAT BUT NOT CONSIDERABLY LESS THAN THAT. THE ISSUES OVERLAP

10:22AM 15 SUBSTANTIALLY. THE WITNESSES ARE OVERLAPPING SUBSTANTIALLY.

10:22AM 16 SO I THINK IT CAN BE A LITTLE QUICKER BUT NOT A LOT QUICKER.

10:22AM 17 THE COURT: OKAY. SO DO YOU THINK SIX TO

10:22AM 18 EIGHT WEEKS, IS THAT A FAIR ESTIMATE?

10:22AM 19 MR. LEACH: YES, YOUR HONOR. FOR THE GOVERNMENT'S

10:22AM 20 CASE-IN-CHIEF.

10:22AM 21 THE COURT: RIGHT. OKAY.

10:22AM 22 MR. COOPERSMITH, CAN YOU ANSWER THE SAME QUESTION, IF YOU

10:22AM 23 CAN, FOR THE DEFENSE?

10:22AM 24 MR. COOPERSMITH: YES. YES, YOUR HONOR.

10:22AM 25 WHEN LISTENING TO THE GOVERNMENT'S ESTIMATE AND THINKING

10:22AM 1 ABOUT WHAT I EXPECT OUR CASE WILL BE, I THINK IT'S GOING TO BE
10:22AM 2 A MINIMUM OF THREE MONTHS. IT COULD BE LONGER. ALSO, IT
10:22AM 3 DEPENDS ON THE GOVERNMENT'S CASE, BUT IT'S REALLY THE SAME AS
10:22AM 4 WHAT YOU HEARD IN THE STATUS CONFERENCE LAST WEEK WITH RESPECT
10:22AM 5 TO MS. HOLMES, THREE TO FOUR MONTHS. IT COULD BE A LITTLE
10:23AM 6 SHORTER THAN MS. HOLMES FOR THE REASONS THAT MR. LEACH ALREADY
10:23AM 7 MENTIONED THAT THE GOVERNMENT'S CASE MAY INDEED GO FASTER.

10:23AM 8 WE'RE CERTAINLY HOPEFUL THAT THE COVID-19 CRISIS WILL BE
10:23AM 9 DISSIPATED IF NOT ELIMINATED BY THEN, AND IF SO, THAT COULD
10:23AM 10 SPEED THINGS UP IF THERE ARE LESS SAFETY PROTOCOLS REQUIRED,
10:23AM 11 BUT I THINK TO BE SAFE WE'RE TALKING ABOUT A MINIMUM OF
10:23AM 12 THREE MONTHS AND POSSIBLY A LITTLE BIT LONGER.

10:23AM 13 THE COURT: FOR THE TOTALITY OF THE TRIAL?

10:23AM 14 MR. COOPERSMITH: YES, YOUR HONOR. YES, YOUR HONOR.

10:23AM 15 THE COURT: THE GOVERNMENT'S CASE AND YOUR CASE?

10:23AM 16 MR. COOPERSMITH: YES, YOUR HONOR.

10:23AM 17 THE COURT: OKAY. WELL, THANK YOU. THAT'S HELPFUL.

10:23AM 18 ALL RIGHT. PARDON ME.

10:23AM 19 SO WHAT I WOULD LIKE TO DO, AS I HAVE SAID, I AM NOT GOING
10:23AM 20 TO ADOPT THE SCHEDULE, BUT IT'S INFORMATIVE. THANK YOU. I
10:23AM 21 APPRECIATE YOU PUTTING YOUR HEADS TOGETHER AND MEETING AND
10:23AM 22 CONFERRING AND ADVANCING THIS.

10:23AM 23 I'M GOING TO TAKE THIS AND TAKE IT THROUGH NEXT WEEK, AND
10:23AM 24 MAYBE AT THE END OF NEXT WEEK I'LL BE ABLE TO LOOK AT OUR
10:24AM 25 CALENDAR AND SEE WHERE OTHER CASES LIE, AND I'LL BE ABLE TO

1 FASHION SOMETHING THAT WE SHOULD DISCUSS AGAIN BEFORE I ADOPT A
2 FINAL SCHEDULE.

3 WITH THAT IN MIND, I THINK WE SHOULD SET ANOTHER STATUS
4 CONFERENCE. I JUST THINK IT'S PRUDENT TO DO THAT. AND I DON'T
5 MEAN TO BURDEN ALL OF YOU, BUT I DO WANT TO KEEP A TIGHT REIN
6 ON BOTH CASES HERE.

7 SO WHAT DO YOU THINK? SHOULD WE COME BACK AT THE LATER
8 PART OF JANUARY? EARLY PART OF FEBRUARY?

9 DO YOU HAVE SOME THOUGHTS, MR. COOPERSMITH? MR. LEACH?

10 MR. LEACH: I THINK EITHER LATE JANUARY OR EARLY
11 FEBRUARY. PROBABLY AFTER THE HOLMES PRETRIAL CONFERENCE WHICH
12 I KNOW IS JANUARY 22ND.

13 SO EITHER THE LAST WEEK OF JANUARY OR THAT FIRST WEEK OF
14 FEBRUARY WOULD WORK FOR THE GOVERNMENT.

15 THE COURT: OKAY. WHY DON'T WE FLIP OVER BECAUSE I
16 THINK I HAD RESERVED SOME TIME THE LAST WEEK IN JANUARY SHOULD
17 IT BE NEEDED FOR ANY HOLMES MATTER.

18 SO WHY DON'T WE LOOK AT FEBRUARY.

19 YES, MR. COOPERSMITH.

20 MR. COOPERSMITH: I'M SORRY, YOUR HONOR. IF I COULD
21 ASK A CLARIFYING QUESTION WITH REGARD TO THAT?

22 SO I UNDERSTAND THE COURT IS NOT GOING TO ADOPT THE
23 SCHEDULE THE PARTIES HAVE PROPOSED TODAY, AND YOU'LL THINK
24 ABOUT THAT.

25 JUST SO I UNDERSTAND, IS THE COURT PLANNING TO MAKE A

10:25AM 1 SCHEDULE IN THE NEXT FEW WEEKS OR IS THE PLAN FROM THE COURT TO
10:25AM 2 MAKE A SCHEDULE AT THIS NEXT STATUS CONFERENCE THAT YOU'RE
10:25AM 3 THINKING ABOUT SETTING IN FEBRUARY, I GUESS?

10:25AM 4 THE COURT: WELL, WHAT I'D LIKE TO DO IS TO PUT
10:25AM 5 SOMETHING TOGETHER THAT I THINK WOULD FIT THE ANTICIPATED COURT
10:25AM 6 SCHEDULE FOR NEXT YEAR, AND THEN GIVE THAT TO YOU AS SOON AS
10:25AM 7 POSSIBLE, AND THEN WE WOULD DISCUSS THAT IN FEBRUARY.

10:26AM 8 I DON'T THINK THAT WOULD INTERFERE TOO MUCH WITH THE WORK
10:26AM 9 THAT YOU NEED TO DO, BOTH SIDES, FOR MR. BALWANI'S CASE.

10:26AM 10 MR. COOPERSMITH: OKAY. THANK YOU, YOUR HONOR. I
10:26AM 11 UNDERSTAND.

10:26AM 12 IT SOUNDS LIKE WE'LL LIKELY GET A SCHEDULE FROM THE COURT
10:26AM 13 THEN WITHIN THE NEXT -- I MEAN, I'M NOT TRYING TO SET A
10:26AM 14 DEADLINE FOR YOUR HONOR.

10:26AM 15 THE COURT: THANK YOU. I APPRECIATE THAT. THANK
10:26AM 16 YOU.

10:26AM 17 MR. COOPERSMITH: -- BUT WITHIN THE NEXT WEEK OR
10:26AM 18 TWO, AND THEN WE'LL DISCUSS THAT, AND HOPEFULLY FINALIZE IT AT
10:26AM 19 THE FUTURE STATUS CONFERENCE IF THAT IS CORRECT.

10:26AM 20 THE COURT: RIGHT. RIGHT.

10:26AM 21 AND WHAT I WANT TO DO IS JUST GIVE YOU SOME INFORMATION
10:26AM 22 FROM THE COURT'S PERSPECTIVE, HAVE YOU LOOK AT IT, AND THEN SEE
10:26AM 23 WHAT YOU NEED TO DO AS FAR AS ADJUSTMENTS ON YOUR TEAMS'
10:26AM 24 AVAILABILITIES, WITNESSES, THAT TYPE OF THING.

10:26AM 25 HOPEFULLY WE CAN GET A FINAL SCHEDULE FOR YOU SOME TIME IN

10:26AM 1 FEBRUARY. THAT WOULD BE THE GOAL.

10:26AM 2 MR. COOPERSMITH: YOUR HONOR, I'M SORRY TO BELABOR
10:26AM 3 THE POINT BUT -- AND I UNDERSTAND THE COURT HAS OTHER MATTERS
10:26AM 4 AND THAT'S, OF COURSE, NOT SURPRISING TO US, BUT DO YOU
10:27AM 5 ANTICIPATE, IF YOU KNOW, WHETHER YOU'LL ATTEMPT TO SET THIS
10:27AM 6 TRIAL FOR MR. BALWANI IN 2021 OR DO YOU HAVE ANY CONCERN THAT
10:27AM 7 IT WOULD, GIVEN THE COURT'S CALENDAR, SLIP TO THE FOLLOWING
10:27AM 8 YEAR?

10:27AM 9 THE COURT: IT'S NOT MY DESIRE TO TRY THE CASE IN
10:27AM 10 2022.

10:27AM 11 MR. COOPERSMITH: OKAY. THANK YOU, YOUR HONOR.
10:27AM 12 THAT'S GOOD. I APPRECIATE THAT.

10:27AM 13 THE COURT: RIGHT. RIGHT. SO WE'LL JUST HAVE TO
10:27AM 14 LOOK AND SEE WHERE THAT IS.

10:27AM 15 BUT MY DESIRE IS TO HAVE BOTH, BOTH PARTIES IN THIS CASE
10:27AM 16 TRIED NEXT YEAR.

10:27AM 17 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

10:27AM 18 THE COURT: YOU'RE WELCOME.

10:27AM 19 ALL RIGHT. ANYTHING ELSE?

10:27AM 20 LET'S SELECT A DATE, MS. KRATZMANN, IN FEBRUARY, MAYBE THE
10:27AM 21 SECOND WEEK OF FEBRUARY. WE CAN SPECIAL SET SOMETHING IF WE
10:27AM 22 NEED TO.

10:27AM 23 THE CLERK: YES, YOUR HONOR.

10:27AM 24 THE COURT: WHY DON'T WE DO THAT. LET'S NOT SET
10:27AM 25 THIS ON A MONDAY AFTERNOON CALENDAR.

10:28AM 1 THE CLERK: OKAY.

10:28AM 2 THE COURT: WHY DON'T WE SET IT ON A --

10:28AM 3 THE CLERK: THURSDAY, FEBRUARY 9TH AT 10:00 A.M. OR
10:28AM 4 FEBRUARY 10TH -- FEBRUARY 9TH IS TUESDAY, AND FEBRUARY 10TH IS
10:28AM 5 WEDNESDAY. WE DO HAVE AN AFTERNOON MATTER ON THE 9TH, BUT
10:28AM 6 THOSE ARE AVAILABLE.

10:28AM 7 THE COURT: RIGHT. DO COUNSEL HAVE A PREFERENCE AS
10:28AM 8 TO EITHER OF THOSE DAYS?

10:28AM 9 MR. LEACH: EITHER WORKS FOR THE GOVERNMENT,
10:28AM 10 YOUR HONOR.

10:28AM 11 MR. COOPERSMITH: THE SAME FOR THE DEFENSE,
10:28AM 12 YOUR HONOR.

10:28AM 13 THE COURT: OH, DEAR, YOU'RE GOING TO MAKE THE COURT
10:28AM 14 MAKE A DECISION.

10:28AM 15 (LAUGHTER.)

10:28AM 16 THE COURT: LET'S SET THE 9TH THEN, THE 9TH AT
10:28AM 17 10:00 A.M., PLEASE, FOR FURTHER STATUS. TIME CONTINUES TO BE
10:28AM 18 TOLLED HERE BECAUSE OF THE TRIAL -- EXCUSE ME, BECAUSE OF THE
10:28AM 19 STATUS CONFERENCE AND THE NATURE OF THIS MATTER BEING SET FOR
10:28AM 20 TRIAL PREVIOUSLY.

10:28AM 21 SO TIME IS EXCLUDED IN THIS MATTER TO ALLOW FOR ALL
10:28AM 22 PARTIES TO CONTINUE TO WORK ON THE TRIAL IN THIS MATTER,
10:28AM 23 INCLUDING NECESSARY PREPARATIONS AS ADVANCED BY THE SCHEDULE
10:29AM 24 THAT THEY'VE PROPOSED HERE WORK CONTINUES IN THAT MATTER, AND
10:29AM 25 I'LL CONTINUE TO EXCLUDE TIME IN THIS MATTER AND READOPT ANY

10:29AM 1 TIME EXCLUSION PREVIOUSLY ENTERED IN THIS MATTER. TIME IS
10:29AM 2 EXCLUDED.

10:29AM 3 IS THAT ALL RIGHT WITH YOU, MR. LEACH?

10:29AM 4 MR. LEACH: YES, IT IS, YOUR HONOR. THANK YOU.

10:29AM 5 THE COURT: IS THAT ALL RIGHT WITH YOU,
10:29AM 6 MR. COOPERSMITH?

10:29AM 7 MR. COOPERSMITH: YOUR HONOR, SO THE PREVIOUS WAIVER
10:29AM 8 OF SPEEDY TRIAL THAT MR. BALWANI SIGNED RAN THROUGH TODAY,
10:29AM 9 DECEMBER 8TH?

10:29AM 10 THE COURT: YES.

10:29AM 11 MR. COOPERSMITH: AND I'VE CONFERRED WITH
10:29AM 12 MR. BALWANI, AND OBVIOUSLY HE WASN'T SURE WHETHER THERE WOULD
10:29AM 13 BE A TRIAL DATE SET TODAY, BUT WE WILL WAIVE SPEEDY TRIAL
10:29AM 14 THROUGH THE DATE OF THE NEXT STATUS CONFERENCE THE COURT HAS
10:29AM 15 SET, FEBRUARY 9TH.

10:29AM 16 I CAN'T WAIVE ANY MORE TIME WHEN I DON'T KNOW WHAT THE
10:29AM 17 DATES ARE.

10:29AM 18 THE COURT: SURE.

10:29AM 19 MR. COOPERSMITH: SO THROUGH THE FEBRUARY 9TH
10:29AM 20 CONFERENCE MR. BALWANI DOES WAIVE, AFTER CONSULTING WITH
10:29AM 21 COUNSEL, HIS SPEEDY TRIAL TIME THROUGH FEBRUARY 9TH.

10:29AM 22 THE COURT: ALL RIGHT. THANK YOU. THAT'S A
10:30AM 23 REMINDER TO ALL COUNSEL THAT IN ADDITION TO A SCHEDULING MATTER
10:30AM 24 AND PERHAPS THE COURT'S SETTING OF THE TRIAL DATE FROM WHICH
10:30AM 25 THE COURT COULD THEN EXCLUDE TIME TO THE TRIAL DATE, WE WILL

10:30AM 1 HAVE TO TAKE UP AN ADDITIONAL TIME EXCLUSION SHOULD THAT BE
10:30AM 2 NECESSARY.

10:30AM 3 SO I'LL PUT THAT ON EVERYBODY'S AGENDA AS WELL.

10:30AM 4 ALL RIGHT. THANKS.

10:30AM 5 ANYTHING FURTHER FROM EITHER PARTY?

10:30AM 6 MR. LEACH: NOT FROM THE GOVERNMENT, YOUR HONOR.

10:30AM 7 THANK YOU VERY MUCH.

10:30AM 8 MR. COOPERSMITH: AND NOT FROM THE DEFENSE,

10:30AM 9 YOUR HONOR. THANK YOU.

10:30AM 10 THE COURT: ALL RIGHT. WELL, THANK YOU. IT'S GOOD
10:30AM 11 SEEING YOU ALL.

10:30AM 12 I WISH YOU ALL THE BEST OF THE HOLIDAY SEASON, AND I HOPE
10:30AM 13 THAT YOU AND YOUR FAMILIES CAN STAY SAFE, AND WE'LL REJOICE
10:30AM 14 ONCE THIS VACCINE IS ADMINISTERED, FIRST OF ALL TO THOSE WHO
10:30AM 15 NEED IT MOST, THAT IS THE DOCTORS, FIRST RESPONDERS, THOSE
10:30AM 16 NURSES AND OTHER STAFF WHO ARE HELPING PEOPLE IN THE HOSPITAL
10:30AM 17 AND JUST DOING MARVELOUS EFFORTS ON ALL OF OUR BEHALVES AND
10:30AM 18 OTHERS.

10:30AM 19 SO I WISH YOU ALL WELL. IT'S GOOD SEEING YOU, AND WE'LL
10:31AM 20 SEE YOU IN FEBRUARY. THANKS.

10:31AM 21 MR. LEACH: THANK YOU, YOUR HONOR. SAME TO YOU.

10:31AM 22 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

10:31AM 23 THE CLERK: COURT IS ADJOURNED. THIS WEBINAR SHALL
10:31AM 24 TERMINATE.

10:31AM 25 (COURT CONCLUDED AT 10:31 A.M.)

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

A handwritten signature in black ink that reads "Irene Rodriguez". The signature is written in a cursive, flowing style with a large, decorative flourish at the end of the last name.

IRENE RODRIGUEZ, CSR, RMR, CRR
3CERTIFICATE NUMBER 8074

DATED: DECEMBER 11, 2020